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KENTUCKY NATIONAL WILDLIFE REFUGE

APRIL 25, 1996.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1611]

The Committee on Environment and Public Works, to which was referred the bill (S. 1611), to establish the Kentucky National Wildlife Refuge, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT

The purpose of S. 1611 is to establish the Kentucky National Wildlife Refuge in western Kentucky. The bill also directs the Secretary to prepare a comprehensive management plan for the development and operation of the refuge and authorizes to be appropriated such sums as are necessary to carry out the Act.

BACKGROUND

The National Wildlife Refuge System was established in 1903 by President Roosevelt and is the only system of Federal lands acquired and managed primarily for fish and wildlife. Today, the refuge system includes 508 refuges totaling over 92 million acres. Kentucky is the sole State in the Nation without its own independently-managed refuge.

The Kentucky National Wildlife Refuge would consist of 20,000 acres of bottomland hardwood and associated wetlands along the Clarks River and the East Fork of the Clarks River in Graves, Marshall, and McCracken Counties, Kentucky. The proposed refuge area, known as the Clarks River Basin, was first identified as a high priority site for protection in 1978 by the U.S. Fish and Wildlife Service. In 1991, the Kentucky Department of Fish and Wildlife Resources asked the U.S. Fish and Wildlife Service to consider the site for protection as a unit in the National Wildlife Refuge System.

In June 1995, the U.S. Fish and Wildlife Service completed its Preliminary Project Proposal to establish the refuge. Habitat within the area supports a diverse variety of wildlife. The bottomland hardwoods provide ideal habitat for wood ducks, white-tailed deer, wild turkey, and neotropical migratory birds. Many nongame migratory birds inhabit the area including woodpeckers, chickadees, and hawks. Some of the waterfowl that winter in the Clarks River Basin include mallards, black ducks and ring-necked ducks. Bald eagles, federally listed under the Endangered Species Act, also frequent the area during the winter months.

COMMITTEE ACTION

S. 1611 was introduced on March 13, 1996 by Senator McConnell. The bill was referred to the Committee on Environment and Public Works. The committee held no hearings on S. 1611, and on March 28, 1996, reported the bill favorably by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 sets forth the short title for this bill as the “Kentucky National Wildlife Refuge Authorization Act.”

Section 2. Findings

Section 2 identifies the Clarks River Basin as being located along the Clarks River and the East Fork of the Clarks River in Graves, Marshall, and McCracken Counties, Kentucky. This area consists of 20,000 acres of bottomland hardwood and associated wetlands and is the only major, natural bottomland hardwood wetland ecosystem in western Kentucky. The Clarks River Basin is critically important to a variety of migratory and resident waterfowl, neotropical migratory birds, forest wildlife, riverine species, and other species associated with bottomland wetlands. This area also affords recreational, research and educational opportunities for the public and has been identified by the U.S. Fish and Wildlife Service (Southeast Region) in a preliminary project proposal plan as deserving permanent protection. Section 2 also finds that since agriculture and silviculture are essential to the local economy and can contribute to healthy ecosystems for wildlife, the refuge should not restrict those activities on private lands.

Section 3. Purpose

Section 3 states that the purpose of the bill is to establish the Kentucky National Wildlife Refuge. Specifically, the refuge is intended to be established and managed to provide for the conservation of fish and wildlife populations and their habitats; preserve and showcase biodiversity and ecosystem management concepts; enhance and provide a link to public areas containing habitat for waterfowl and other migratory birds; fulfill the United States’ international treaty obligations with respect to fish and wildlife and their habitats; restore and maintain the physical and biological integrity of wetlands and other waters within the refuge; conserve species threatened with extinction; and provide opportunities for scientific research, environmental education, and fish-and-wildlife-

related recreation, to the extent compatible with the refuge's other purposes.

Section 4. Definitions

Section 4 defines the following four terms for this bill: "land"; "refuge"; "Secretary"; and "water".

Section 5. Establishment of Refuge

Section 5 directs the Secretary to establish a staffed and fully functional national wildlife refuge to be known as the "Kentucky National Wildlife Refuge." The Secretary is directed to consult with appropriate State and local officials, private conservation organizations, and other interested parties in designating the boundaries of the refuge; prepare a detailed map that is available for public inspection and depicts the designated boundaries; and ensure that the lands, aquatic systems, wetlands and waters depicted on the map are included within the refuge boundaries. The Secretary is also authorized to make minor revisions to refuge boundaries as are necessary to carry out the purposes of the refuge and to facilitate acquisition of property in the refuge. Section 5 also provides that the Secretary may acquire lands and waters within designated boundaries for inclusion in the refuge by purchase from willing sellers, donation, or exchange.

Section 6. Administration

Section 6 directs the Secretary to administer all acquired lands and waters in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.). The Secretary is authorized to use additional available authority for the conservation and development of fish, wildlife, and natural resources, the development of outdoor recreational opportunities, and interpretative education. The Secretary is directed to prepare a comprehensive management plan for the development and operation of the refuge within 18 months of enactment of this bill. Section 6 specifies contents of the management plan and directs the Secretary to provide opportunity for public participation in its development. Section 6 further directs the Secretary to work with, provide technical assistance to, provide community outreach and education programs for or with, or enter into cooperative agreements with private landowners, State and local governments or agencies, and conservation organizations to further the purpose for which the refuge is established.

Section 7. Gifts

Section 7 directs the Director of the U.S. Fish and Wildlife Service to request that the National Fish and Wildlife Foundation take appropriate measures to encourage, accept, and administer private gifts of property or funds to further the bill's purpose.

Section 8. Authorization of Appropriations

Section 8 authorizes to be appropriated such sums as are necessary to carry out the Act.

HEARINGS

No hearings were held on the bill. Comments submitted by the Department of the Interior on S. 1611 follow:

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
April 12, 1996.

Hon. JOHN CHAFEE,
*Chairman, Committee on Environment and Public Works,
United States Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for our views on S. 1611, to establish the Kentucky National Wildlife Refuge.

The Fish and Wildlife Service has been working with the State of Kentucky for several years in an effort to establish a refuge based in Kentucky, and the lands covered by S. 1611 are the result of this effort.

We would accordingly hope to be able to work with the committee and the Kentucky Senators to secure enactment of the bill.

However, we strongly oppose S. 1611 unless the prohibition on the use of condemnation found in section 5(d) is removed from the bill. If this is done, we would strongly support enactment of the bill.

No condemnation is planned for any aspect of this project. The Fish and Wildlife Service's policy and history is to rely on willing sellers for land acquisition, reserving adverse condemnation for rare instances of an imminent threat to public resources that cannot be otherwise resolved.

In the last 10 years, for example, only 15,773 acres were condemned, from 4 owners, or less than 1/10th of 1 percent of the 1,473,214 acres purchased from 6,038 owners. Since 1988 the Fish and Wildlife Service has had no condemnations except with the consent of the owner, to settle price differences or clear titles (such "friendly condemnations" are not included in the above figures). We have provided the committee staff and Senators Ford and McConnell's staffs with a paper explaining this policy, which also contains these numbers in more detail.

In addition, Fish and Wildlife Service policy requires that before engaging in a "declaration of taking," which is the usual form of condemnation without the consent of the owner, there is consultation with the authorizing and appropriations committees, and with the Members of Congress representing the area in question. It is not an action undertaken lightly.

Despite the rarity of such condemnation, however, the Administration is not willing to forego this authority, as a means of last resort, to protect the public's resources, nor to agree to the precedent that would be set if we supported the prohibition. In the current climate, we would anticipate subsequent efforts to void condemnation authority generally for the National Wildlife Refuge System.

Neither the plans for the Kentucky refuge nor the track record of the Fish and Wildlife Service warrant this restriction.

We would hope for an opportunity to work with the committee and the sponsor to resolve this issue in a manner which would permit us to support enactment of S. 1611 as reported.

Sincerely,

GEORGE FRAMPTON,
Assistant Secretary for Fish and Wildlife and Parks.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report on that legislation.

At the business meeting of the Committee on Environment and Public Works on March 28, 1996, the bill S. 1611 was ordered to be reported favorably by voice vote. No rollcall vote was taken.

REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the bill.

The bill does not create any additional regulatory burdens.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 25, 1996.

Hon. JOHN H. CHAFEE,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1611, the Kentucky National Wildlife Refuge Authorization Act, as ordered reported by the Senate Committee on Environment and Public Works on March 28, 1996. Based on the information available at this time and assuming appropriation of the necessary amounts, CBO estimates that the Federal Government would spend between \$15 million and \$20 million over the next 6 years to acquire and develop property necessary to establish the proposed refuge. In addition, beginning in fiscal year 1997, the Government would incur annual expenses of about \$300,000, rising to about \$800,000 by 2002, to administer the site, also assuming appropriation of the necessary sums. These costs are highly uncertain because they would depend on the outcome of property appraisals that have not yet been undertaken and on boundary determinations and other planning decisions that will not be finalized for several years.

S. 1611 would direct the Secretary of the Interior to establish the Kentucky National Wildlife Refuge on about 20,000 acres of land along the Clarks River and the Fast Fork of the Clarks River. The new refuge would be administered by the U.S. Fish and Wildlife

Service (USFWS) for the purposes of public education, scientific research, recreation, and conservation of natural resources. For such purposes, the bill would: Authorize the USFWS to acquire property within the refuge by purchase from willing sellers, donation, or exchange; direct the agency to construct any necessary administrative and maintenance buildings; require the USFWS to prepare a management plan for the refuge that provides for the development of appropriate observation points, trails, parking lots, and other facilities; and direct that the agency provide for public outreach and education through technical assistance, community programs, and cooperative agreements.

Finally, S. 1611 would authorize the appropriation of whatever amounts are necessary for these activities.

Although formal property appraisals and boundary studies have not yet been undertaken, CBO estimates that the USFWS would spend between \$12 million and \$16 million to acquire land for the new refuge. Expenditures would depend on how many acres are purchased and on their appraised value. We estimate that the agency would spend an additional \$3 million to \$4 million for other up-front activities, including restoring resources and constructing buildings and visitor facilities. Once acquisition of refuge lands has begun, the agency would spend about \$300,000 initially for annual planning and maintenance costs. Once all acquisition and development of refuge lands has been completed, annual costs, including payments to local governments under the Refuge Revenue Sharing Act, would be about \$800,000.

For purposes of this estimate, CBO assumes that S. 1611 will be enacted by the end of fiscal year 1996, and that the entire amounts estimated to be necessary will be appropriated as needed. Estimated costs are based on information provided by the USFWS and local officials.

S. 1611 contains no private sector or intergovernmental mandates as defined in Public Law 104-4 and would impose no direct costs on State, local, or tribal governments. Enactment of S. 1611 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JUNE E. O'NEILL, *Director*.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes to existing law must be shown if applicable. No change to existing law would occur with passage of this legislation.